

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 166 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIJAYANAND ROAD LINES LTD. THROUGH SHRI GAUTAMBHAI KUMBHA

Versus

THE STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

MR MS JAYSWAL for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/04/98

ORAL JUDGEMENT

1. Heard Ld.advocate Mr.Y.N.Oza appearing for petitioner. Rule. Respondent No.2 served earlier with show cause notice vide order dated 7.4.98. The petitioner has filed affidavit of due service, yet respondent No.2 absent.

2. The petitioner has challenged the legality and validity of the order passed by the Ld.Metropolitan Magistrate, Ahmedabad, Court No.4 in the proceedings of Cri.Case No.2401/97.

3. The petitioner is the owner of a truck and has been running business of transporting goods. The subject truck along with goods was missing and on a complaint the offence was registered vide Cri. Reg.No.278/97 for the offences made punishable under sections 365, 394, 497, 395, 120 B etc. That during the investigation the police recovered the said truck and muddamal and filed Cri.Case No.278/97 in the court of Ld.Metropolitan Magistrate, Ahmedabad. That the present petitioner moved an application under section 451 of Cr.P.C. claiming interim custody of the muddamal goods pending trial. The Ld.Metropolitan Magistrate appears to have issued notice to the parties and on completion of formalities heard the application and decided the same vide impugned order, dated 31.3.1998. Certified copy of the said order is produced vide pages 4 to 8 of the compilation.

4. It appears that the Ld.Metropolitan Magistrate, Ahmedabad, Court No.4 has rejected the application on the ground that the offence made punishable under section 395 is exclusively triable by the court of sessions and thereby only the sessions court has jurisdiction to return the property. Ld.Metropolitan Magistrate has also observed in the order that the other parties have also made application for return of muddamal and all such applications filed by different parties along with present petitioner were rejected.

5. The Ld.GP--Mr.P.G.Desai did not dispute the proposition of law that the Ld.Metropolitan Magistrate, Ahmedabad Court No.4 committed error of law inasmuch as under section 451 of Cr.P.C. return of the muddamal property by way of interim custody is within the sole jurisdiction of the trial court taking cognizance of offence. It may be that subsequently as offence under section 395 has been added, the case has become a sessions case and that fact does not preclude the Magistrate from exercising jurisdiction conferred by section 451 of Cr.P.C. Under these circumstances, the said order being erroneous the present petitioner is deprived of his right to get the interim custody of the muddamal for a pretty long period. Therefore, in my opinion, the impugned order not only requires to be set aside and quashed but also the petitioner should be given the interim custody of the muddamal on appropriate conditions.

6. So far as respondent No.2 is concerned Ld.Advocate--Mr.M.M.Desai has appeared and has submitted that the respondent No.2 has no objection if the custody of muddamal except the cloth of approximately 400 Mtrs of white color is reserved till the rights of the respondent No.2 is decided.

7. In view of the above referred to facts and circumstances, the impugned order, dated 31.3.98 passed by the Ld.Metropolitan Magistrate, Ahmedabad, Court No.4 in the proceedings of Cri.Case No.2401/97 is hereby set aside and quashed. The Ld.Metropolitan Magistrate, Ahmedabad, Court No.4 is directed to grant interim custody of muddamal except white cloth of 400 Mtrs alleged to have been claimed by the respondent No.2 to the petitioner on acceptance of appropriate security pending final disposal of trial and subject to result of trial. The Ld.Metropolitan Magistrate shall impose necessary condition of producing the said muddamalor its value as and when required by the court. The respondent No.2 shall be at liberty to move Ld.Metroplitan Magistrate court claiming the muddamal cloth in respect to Receipt No.56/97 issued by Kagdapith PS. If necessary, the Ld.Metropolitan Magistrate shall hold necessary enquiry before giving custody to the claiming parties and pass necessary order in accordance with law However, the interim custody of muddamal property as per the above said order shall be given to the petitioner on at the earliest and preferably on or before 30.4.98.Rule is made absolute accordingly. No costs. DS permitted.

...